

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING
NOVEMBER 10, 2004**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, November 10, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

SECRETARY TO THE BOARD: Peggy S. Pelikan

OTHERS PRESENT: Tom Champeau, BA04:085, operator of Rustic Inn
Tina and Tom Stapelfeldt, BA04:086, petitioners
John Gruhlke, BA04:087, neighbor
Keith S. Henson, BA04:080, petitioner
Art Foss, BA04:084, neighbor
Dave Kalusche, BA04:079, petitioner
Kim Ferraro, BA04:084, petitioner
Michael Maas, BA04:083, petitioner
Colin Butler

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of October 27, 2004.*

The motion was seconded by Mr. Schmidt and passed with four yes votes. Mr. Tarmann abstained because he was absent from the October 27, 2004 meeting.

NEW BUSINESS:

BA04:080 KEITH AND JOYCE HENSON (Held in abeyance from October 27, 2004)

Mr. Tarmann *I move to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **denial** of an open space variance, but **approval** of a floor area ratio variance and a special exception from the accessory building floor area ratio requirement, with the following conditions:

1. The floor area of the new residence, including the first and second floors and any proposed covered porches, may not exceed 1,800 sq. ft.
2. The floor area of the detached garage may not exceed 576 sq. ft. Note: This will permit a 24 ft. x 24 ft. detached garage, or its equivalent.
3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
4. The garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if the upper level is accessible via pull-down stairs or a ladder. Permanent stairs to an upper level in the garage are not permitted.
5. The new residence and detached garage must conform with all locational requirements of the Ordinance.
6. Prior to the issuance of a zoning permit, a complete set of plans for the residence and detached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a zoning permit, a Plat of Survey with the staked-out location of the new residence and detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of a new residence and detached garage do not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not drain to the neighboring properties or to the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested open space variance to permit the proposed open space of 6,929 sq. ft. would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where

compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Since the lot area is 9,625 sq. ft., conformance with the minimum open space requirement of 7,000 sq. ft. would not be unnecessarily burdensome and would not prevent the use of the property for a permitted purpose, i.e. for a single-family residence.

Some relief from the maximum permitted floor area ratio of 19.5% and the maximum permitted accessory building floor area ratio of 3% is justified. A conforming 19.5% floor area ratio would permit a total floor area, including both floors of the residence and the garage, of only 1,876 sq. ft. Allowing for a garage size of 576 sq. ft., as recommended, would permit only a 1,300 sq. ft. residence, which would be unnecessarily burdensome and not in keeping with other development in the area. A conforming accessory building floor area ratio of 3% would permit a detached garage of only 288 sq. ft. This would not permit even a modest-sized two-car garage and would also be unnecessarily burdensome.

It is felt, however, that the proposed residence, and especially the proposed 36 ft. x 40 ft. detached garage, are too large for this small, 50 ft. wide lot. A residence no larger than 1,800 sq. ft. and a detached garage no larger than 576 sq. ft., as recommended, would be a reasonable use of the property that would not be detrimental to the surrounding neighborhood and would not be contrary to the public interest. While the petitioners may desire a larger detached garage, the proposed 36 ft. x 40 ft. garage is not necessary for a reasonable use of the property. Only the physical limitations of the property and not the personal circumstances or desires of the property owner can be considered when granting variances. Even if the petitioners are now planning to live on the subject property and would be permitted to park a motorhome there, the fact that they own a 35 ft. long motorhome and would like to build a garage large enough for that motorhome, do not justify granting variances to permit the construction of a 36 ft. x 40 ft. detached garage on such a small and narrow lot. Therefore, the approval of a floor area ratio variance and a special exception from the accessory building floor area ratio requirement, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:079 DAVID KALUSCHE – Petitioner, Troy Alexander - Owner

Mr. Bartholomew *I move the matter be held in abeyance until December 8, 2004 per the petitioner's request.*

The motion was seconded by Mr. Schultz and carried unanimously.

BA04:083 MICHAEL AND PAMELA MAAS

Mr. Bartholomew *I move to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report*

The motion was seconded by Mr. Ward and passed with four yes votes. Mr. Schultz voted no.

The staff's recommendation was for **denial** of the request for a variance from the road setback requirements and **approval** of the request for a variance from the floor area ratio requirements and a special exception from the accessory building floor area ratio requirements with the following conditions:

1. Prior to the issuance of a zoning permit, the Environmental Health Division certify that the existing septic system is adequate for the proposed garage construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The garage must meet the road setback or road setback averaging provisions of the Ordinance.
3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. The garage shall be no larger in size that is proposed herein (792 sq. ft.).
5. The shed on the property must be removed from the property prior to the issuance of a zoning permit for the proposed garage.
6. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
7. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Several properties within 200 ft. of the subject property have detached garages that appear to be closer than the required 50 ft. to the base setback line of Lake Dr. The petitioner may submit additional information that would allow them to average to a road setback, close to what they are proposing. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variance from the road setback requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where

compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The approved request for a variance from the total floor area ratio and a special exception from the accessory building floor area ratio will permit the construction of a detached garage and allow the petitioner reasonable use of the property. The property currently does not contain a garage and the proposed garage is a reasonable size, therefore, the approval of this request is within the purpose and intent of the Ordinance.

BA04:084 KIM FERRARO – Petitioner

Estate of Ruth Troyer c/o Nadine Buth - Owner

Mr. Schultz

I move to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report with Conditions #2 and #4 to read as follows:

- 2. The first floor of the residence shall be no larger than 1,250 sq. ft., which must include a two-car garage. The total floor area on the property, including the garage, may not exceed 2,200 sq. ft.*
- 4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage, deck, proposed retaining walls, and any other appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. The proposed residence and deck must conform to the offset, road setback, shore setback, and floodplain setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the residence must be located the additional distance from the side lot lines, road, shore or floodplain as the overhangs exceed two (2) ft. in width.
2. The first floor of the residence shall be no larger than 1,250 sq. ft., which must include a garage. The garage must not exceed 400 sq. ft. in size. The total floor area on the property may not exceed 1,800 sq. ft.
3. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage, deck, and any other appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 4. It should be noted that if any retaining walls are proposed they must meet all the ordinance requirements or additional variances must be applied for.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variances from the floor area ratio, and open space requirements with the recommended conditions, allows the petitioner reasonable use of the property, while maintaining the purpose and intent of the Ordinance. A hardship exists with respect to open space because it is impossible to conform with the minimum open space requirement of 7,000 sq. ft. when the lot area is only 5,246 sq. ft. A hardship also exists with respect to floor area ratio because it is impossible to conform to the minimum total floor area required of 1,100 sq. ft. when 19.5% of the total lot size is only 1,023 sq. ft. The recommended floor area of 1,800 sq. ft. allows the petitioner a reasonably sized residence and an attached garage. It should also be noted that the topography of the lot lends itself to an exposed basement which may allow the petitioner more usable space, while not expanding the footprint or the floor area on the property.

Therefore, the approval of variances from floor area ratio, and open space requirements, with the recommended, modifications and conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:085 BOB WILSON

Mr. Schmidt

I move to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report with the following modification to Condition #4:

Condition #4 shall read as follows: Lots 5,6,7,8, and 9 of Mapleton must be combined by a Certified Survey Map. The Certified Survey Map would need to be approved by the Town of Oconomowoc and recorded in the Waukesha County Register of Deeds office, prior to the issuance of an occupancy permit for the addition.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for **approval** of the request for variances from the remodeling a non-conforming structure in excess of 50% of its fair market value, and the parking requirements, as well as a special exception from the road setback requirements, with the following conditions:

1. A Site Plan/Plan of Operation must be approved by the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission prior to the issuance of a zoning permit for the additions and the parking.
2. The additions must be located no closer to the road than the existing restaurant as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the road as the overhangs exceed two (2) ft. in width.
3. All proposed parking on the property must be located a minimum of 33 ft. from the centerline of Brown Street. Any existing parking on Brown Street must be relocated to a minimum of 33 ft. from the centerline of Brown Street. The parking lot proposed to the south shall be redesigned and enlarged to accommodate the needed off-street parking. The new parking area shall be in place upon the occupancy of the newly expanded restaurant. It is further recommended that the Board of Adjustment and Planning and Zoning Division staff strongly urge the Town of Oconomowoc to abandon the alley on the west side of the property, which does not function as an alley, and allow that additional space to be used for parking and/or access.
4. Lots 5, 6, 7, 8, and 9 of Mapleton must be combined by a Certified Survey Map. The Certified Survey Map would need to be approved by the Town of Oconomowoc and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit for the addition.
5. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed additions and all parking spaces, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing holding tank is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff. Further, a Sanitary Sewer Service Amendment must be provided to accommodate the expansion of the facility as required by NR 113 Wisconsin Administrative Code.
7. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed additions and parking does not result in adverse drainage onto adjacent properties.

The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for variances from the road setback, remodeling a non-conforming structure in excess of 50% of its fair market value and parking requirements of the Ordinance will permit the construction of two additions to the existing bar/restaurant and interior remodeling and will allow the petitioner reasonable use of the property. The Waukesha County Public Works Department has indicated that they would like to see all parking outside of the Brown Street road right-of-way. In addition, the existing parking located in the road right-of-way of Brown Street is a significant safety hazard and it will benefit the public for it to be removed. It is recommended that the Town of Oconomowoc abandon the 20 ft. wide alley on the west side of the property and give the land to the subject property owner to accommodate additional space for parking. The approval of this request, as modified and conditioned, will permit the additions to the restaurant and will permit additional parking located 33 ft. from the centerline of Brown Street and the relocation of existing parking to at least 33 ft. from the centerline of Brown Street. The additions and the proposed parking will not have an adverse affect on the neighboring properties and as conditioned, will serve to promote the purpose and intent of the Ordinance.

BA04:086 STAPELFELDT BUILDERS – Petitioner

Rick and Kathy Scheffler - Owners

Mr. Tarmann

I move to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report.

The motion was seconded by Mr. Schultz and passed with three yes votes. Mr. Schmidt and Mr. Ward voted no.

The staff's recommendation was for **denial** of the request for a variance from the floor area ratio requirements and **approval** of a request for a variance from the floodplain setback requirements with the following conditions:

1. The residence and attached garage, including the deck and patio, must be located at least 75 ft. from the shoreline of Lower Nemahbin Lake, 50 ft. from the 100-year floodplain, 15.75 ft. from the base setback line of Elm Street and must be located at least 11.6 ft. from the east and west lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, the lake, and 100-year floodplain as the overhangs exceed two (2) ft. in width. The floor area ratio on the property must not exceed 19.5%.

2. The natural grade of the closest point of the proposed residence and decking to the 100-year floodplain must be at least 3 ft. above the 100-year floodplain elevation. The elevations shall be shown on a scaled Plat of Survey.
3. The boathouse must be removed prior to the expiration date of the zoning permit to be issued for the proposed residence and attached garage.
4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage, decks, patios and any other appurtenances, including retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. A detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed residence does not result in adverse drainage onto adjacent properties or the road. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan, including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variance from the 100-yr. floodplain setback, with the recommended conditions, allows the petitioner reasonable use of the property, while maintaining the spirit and intent of the Ordinance. Our Department does not feel that the proposed residence would negatively impact the natural resources or surrounding area, due to the construction being required to be located greater than the required shore setback and more than 3 ft. above the 100-year floodplain elevation. It has not been demonstrated, as required for a variance, that denial of the request for a variance from the floor area ratio requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The petitioners would be allowed to construct a 3,705 sq. ft. residence on the property without the need for a variance. Therefore the proposal, as conditioned, would be in conformance with the spirit and intent of the Ordinance.

BA04:087 JAMES SCHMITTINGER

Mr. Schultz

I move to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **approval** of the request for a variance from the offset requirements, with the following conditions:

1. The proposed garage must be located at least 20 ft. from the north lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the north lot line as the overhangs exceed two (2) ft. in width.
2. The garage must be a minimum of 10 ft. from the residence.
3. Prior to the issuance of a zoning permit, a scaled rendering of the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. The small shed located in the proposed garage location must be removed from the property prior to the issuance of the zoning permit for the proposed garage. Further, the Town of Vernon Plan Commission must approve the number of accessory structures (3) located on the property and documentation of such approval must be submitted to the Planning and Zoning Division staff prior to the issuance of the zoning permit.
5. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage and all other buildings in conformance with the above conditions must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
7. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for a variance from the offset requirements of the Ordinance will permit the construction of a detached garage and allow the petitioner reasonable use of the property. A detached garage in the proposed location was previously approved by the Board of Adjustment (BA77:139). Although the zoning on the property has been changed and therefore the required offset has been increased to 30 ft., the proposed location of the new garage will not adversely affect the neighboring properties, and if located 20 ft. from the lot line will meet the spirit and intent of the Ordinance in that 20 ft. was the original requirement and the lot does not conform with the A-2 minimum lot size requirement of three acres.

OTHER ITEMS REQUIRING BOARD ACTION:

DISTRIBUTION OF UW-EXTENSION PLANNING AND ZONING SEMINAR REGISTRATION INFORMATION – DECEMBER 16, 2004.

The Board has asked for information as to whether this teleconference seminar can be accessed from an outside telephone line.

DISCUSSION OF POLICIES AND PROCEDURES:

The Board has requested that this matter be placed on the December 8, 2004, meeting agenda. In addition, the Board has inquired as to what, if any, counties have adopted a similar “Guide for County Board of Adjustments” and what effects it has had.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:07 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment